

FILED

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United States District Court  
Eastern District of North Carolina  
Western Division

PETER A. MOORE, JR., CLERK  
US DISTRICT COURT, EDNC  
BY  DEP CLK

Case No. S:20-CT-3055

(To be filled out by Clerk's Office only)

Derwin McFadden

Inmate Number 0494228

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

Sergeant James at Pender C.I. # 4150

COMPLAINT

(*Pro Se* Prisoner)

Sergeant William A. Brandon at Pender CI. # 4150

Jury Demand?

Yes

No

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section IV. Do not include addresses here.)

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

## I. COMPLAINT

Indicate below the federal legal basis for your claim, if known. This form is designed primarily for pro se prisoners challenging the constitutionality of their conditions of confinement, claims which are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

42 U.S.C. § 1983 (state, county, or municipal defendants)

Action under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) (federal defendants)

Action under Federal Tort Claims Act (United States is the proper defendant; must have presented claim in writing to the appropriate Federal agency and received a notice of final denial of the claim pursuant to 28 U.S.C. § 2401(b))

## II. PLAINTIFF INFORMATION

Derwin McFadden

Name

049428

Prisoner ID #

MAURY Correctional Institution

Place of Detention

P.O. Box 506

Institutional Address

MAURY  
City

N.C.  
State

28554  
Zip Code

## III. PRISONER STATUS

Indicate whether you are a prisoner or other confined person as follows:

Pretrial detainee  State  Federal

Civilly committed detainee

Immigration detainee

Convicted and sentenced state prisoner

Convicted and sentenced federal prisoner

#### IV. DEFENDANT(S) INFORMATION

*Please list the following information for each defendant. If the correct information is not provided, it could result in the delay or prevention of service. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.*

Defendant 1: Mr. James

Name

Sergeant

Current Job Title

Pender C.I. #4150, P.O. Box 1058

Current Work Address

Burgaw

City

N.C.

State

28425

Zip Code

Capacity in which being sued:  Individual  Official  Both

Defendant 2: Mr. William A. Brandon

Name

Sergeant

Current Job Title

Sergeant at Pender C.I. #4150, P.O. Box 1058

Current Work Address

Burgaw

City

N.C.

State

28425

Zip Code

Capacity in which being sued:  Individual  Official  Both

**Defendant(s) Continued**

Defendant 3: \_\_\_\_\_

Name \_\_\_\_\_

Current Job Title \_\_\_\_\_

Current Work Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

Capacity in which being sued:  Individual  Official  Both

Defendant 4: \_\_\_\_\_

Name \_\_\_\_\_

Current Job Title \_\_\_\_\_

Current Work Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

Capacity in which being sued:  Individual  Official  Both

V. STATEMENT OF CLAIM

Place(s) of occurrence: Pender C.T. #4150

Date(s) of occurrence: 06-01-2019

State which of your federal constitutional or federal statutory rights have been violated:

Eight Amendment - Carelessness, and recklessness by the Official, Fail to recognize Plaintiff as level-(2) Mental Health, under the (ADA)-American Disability Act

State here briefly the FACTS that support your case. Describe how each defendant was personally involved in the alleged wrongful actions, state whether you were physically injured as a result of those actions, and if so, state your injury and what medical attention was provided to you.

FACTS:

Sergeant James and Sergeant Brandon release plaintiff from the Holden cell under the influence of K-2(spice), after being notified by officer C.gray about what took place and the Confession to using K-2(spice) by the Plaintiff to both Sergeant. Both Sergeant did not follow Policy of North Carolina Division of Prison For the Plaintiff is level-(2) Mental Health this Policy insure the Safety of the inmate by placing them in restrictive housing for administrative purposes until they can be seen by Mental Health Staff. This Allow the Plaintiff to be Screen by Medical Due to Policy and Procedure at Pender C.I

under the (ISII) automated record screen Process before being place in restrictive housing for administrative Purposes (seg) To insure the Plaintiff Safety.

Who  
did what to  
you?

What happened to you?

The Following incident took place at Pender C.I. #4150 that led to the injuries of the plaintiff after being release Under the influence of K-2 (Spice). According to Officer D'souza 138-B statement (B14) writeup... That the plaintiff ask officer D'Souza for help by ask for Mental Health or a Sergeant because he did not feel like himself before Striking a glass window under the influence of K-2 (Spice) That cause immediate life threaten danger For exposure to both wrist and arm where cut. That the Plaintiff had to be taken to New Hanover Memorial Regional Hospital for a life Saving Procedures

When did it happen to you?

The 1<sup>st</sup> day of June 2019, that Code Blue from Medical was call for Dorm-(c) on the North yard at 3:30 PM.

Where did it happen to you?

It ~~happened~~ happen at Pender C.T. #4150 after Being release from the holden cell Under the Influence of K-2 (Spice), to the North yard Where the Plaintiff was assign to Dorm-(c).

What was  
your  
injury?

My injuries consist of both arm and wrist being exposed from the cut. That for the operation it took a vein from left ankle to be placed in my left wrist to save my left hand. That the Plaintiff suffer mental and physical injuries from this mishap. That the plaintiff have to endure going through life with the disability factor. That the Plaintiff do not have the full-range of motion in his left hand.

## VI. ADMINISTRATIVE PROCEDURES

*WARNING: Prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions. 42 U.S.C. § 1997e(a). Your case may be dismissed if you have not exhausted your administrative remedies.*

Have you filed a grievance concerning the facts relating to this complaint?  Yes  No

If no, explain why not:

*The Copy for this remedy exhaust  
will be with the Original and Court  
Copy only...*

Is the grievance process completed?  Yes  No

If no, explain why not:

*The Copy for this remedy exhaust  
will be with the Original and Court  
Copy only...*

## VII. RELIEF

*State briefly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.*

*I want to be Compensate for my mental and physical injuries. For the damage amount is more than \$25,000 in damages. That I want to be well Compensate For I am unable to work a hands on job for where I am most skilled at. That I need this financial Support Upon my release from prison, because of this disability. That I ask For this relief in this fashion.*

### VIII. PRISONER'S LITIGATION HISTORY

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal *in forma pauperis* in federal court if that prisoner has "on three or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. §1915(g).

Have you brought any other lawsuits in state or federal court while a prisoner?

Yes  No

If yes, how many? (4)

Number each different lawsuit below and include the following:

- Name of case (including defendants' names), court, and docket number
- Nature of claim made
- How did it end? (For example, if it was dismissed, appealed, or is still pending, explain below.)

#1 - North Carolina Industrial Commission

(NAME) - Lieutenant Hackney (NCTC - I.C. File # TA-27913)

(pre - dismiss)

#2 North Carolina Industrial Commission

(NAME) - Sgt. Sanderson, % Neu, % Cooey, and % Jones

(NCIC - I.C. File # TA-27575)

(Excessive Force - Active appeal)

#3 North Carolina Industrial Commission

(NAME) - Sgt. James and Sgt. Brandon

(NCIC - I.C. File # TA-27910 - TA-27965 (Consolidated))

(Tort claim Negligence - Active)

#4 Federal Civil Rights Claims Under 42 U.S.C. § 1983

(NAME) - Sgt. Sanderson, % Neu, % Cooey, and % Jones

(No. 5:19-CT-3346-FL)

## IX. PLAINTIFF'S DECLARATION AND WARNING

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

*Each Plaintiff must sign and date the complaint and provide prison identification number and prison address.*

01-28-2020

Dated

Derwin McFadden  
Plaintiff's Signature

Derwin McFadden

Printed Name

0494228

Prison Identification #

P.O. Box 506

Prison Address

MAURY

City

N.C.

State

28554

Zip Code